INDEX

Page

Opinion below 2

Jurisdiction 2

Question presented 2

Statutes involved 2

Statement 2

Reasons for granting the writ 4

Conclusion 14

Appendix 15

CITATIONS

CASES:

Barber v. *Varleta*, 199 F. 2d 419 5

Cabebe v. *Acheson*, 183 F. 2d 795 ..... 5, 6

Carlson v. *Landon*, 342 U. S. 524 ..... 8, 12

Costanzo v. *Tillinghast*, 287 U. S. 341 11

Delgadillo v. *Carmichael*, 332 U. S. 388 13

Eichenlaub v. *Shaughnessy*, 338 U. S. 521 10

Gancy v. *United States*, 149 F. 2d 788, certiorari denied. 326 U. S. 767 5

Harisiades v. *Shaughnessy*, 342 U. S. 580 ..... 8, 9, 12

Lapina v. *Williams*, 232 U. S. 78 13

Ng Fung Ho v. *White*, 259 U. S. 276 12

Ozawa v. *United States*, 260 U. S. 178 11

Toyota v. *United States*, 268 U. S. 402 5

United States v. *Brown*, 333 U.S. 18 12

United States v. *Ching Lum*, 240 Fed. 392 14

United States v. *Sui Joy*, 240 Fed. 392 14

United States v. *Wong Yuen*, 240 Fed. 392 14

United States v. *Yamamoto*, 240 Fed. 390 13

United States ex rel. Claussen v. *Day*, 279 U. S. 398 13

Viloria, Application of, 84 F. Supp. 584 6

STATUTES:

Act of October 16, 1918, 40 Stat. 1012, as amended, 8 U.S.C., Supp. V, 137; repealed by Sec. 403(a)(16) of the Immigration and Nationality Act, P. L. 414, 82nd Cong., 2d Sess. ..4, 5, 7

Section 1(2)(C) 11, 17

Section 4 ..... 12, 17

Page

Act of June 28, 1940, 54 Stat. 679 9
Act of August 29, 1916, 39 Stat. 545, c. 416 5
Act of March 23, 1912, 37 Stat. 77, c. 65 5
Act of July 1, 1902, Sec. 4, 32 Stat. 691, c. 1369 5
Internal Security Act, 64 Stat. 987, 1006, Sec. 22 .....3, 8, 14
Philippine Independence Act, Act of March 24, 1934, as amended, 48 Stat. 456, c. 84, formerly 48 U.S.C. 1232 et seq.:
Section 8 (a) 5, 15
Section 8 (b) 15
Section 14 16
22 U.S.C., Supp. V, 1394, note 6
48 U.S.C. (1934 ed.) 1002 5

MISCELLANEOUS:

House Conference Report No. 2683, 76th Cong., 2d Sess. 8
House Report No. 645, 65th Cong., 2d Sess. 8
House Report No. 994, 76th Cong., 1st Sess. 8
House Report No. 1286, 80th Cong., 2d Sess. 8
Presidential Proclamation No. 2695 6
Senate Report No. 1154, 76th Cong., 1st Sess. 8
Senate Report No. 1721, 76th Cong., 2nd Sess. 8
Senate Report No. 1796, 76th Cong., 2nd Sess. 8
Senate Report 1199, 80th Cong., 2nd Sess. 8

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 345

JOHN BOYD, District Director, Immigration and Naturalization Service, and ROBERT D CUMMINGS, *Petitioners*

v.

ERNEST ARCEBAL MANGAOANG

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Acting Solicitor General prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, which directed that the judgment of the district court be reversed and the cause remanded with directions to order the respondent's release from custody.

OPINION BELOW

The opinions of the Court of Appeals (R. 63-68) and of the District Court (R. 48-53) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 17, 1953 (R. 69). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a Filipino is deportable on the ground of past membership in the Communist Party, where such membership occurred during the time when, although a national of the United States, he was subject by statute to all laws relating to immigration, exclusion and expulsion of aliens.*

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, *infra,* pp. 15-17.

STATEMENT

Respondent is a native of the Philippine Islands and a subject of the Republic of the Philippines who has resided in the United States since his entry on April 29, 1926 (R. 5, 19, 24, Ex. 2-8).[1] On August 10, 1951, after deportation hearings

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* The court below did not determine other issues raised by respondent as to the fairness of the deportation hearing and the constitutionality of Section 22 of the Internal Security Act.

[1] The exhibits are part of the record of the deportation hearing submitted with the return (R. 28).

and review by the Assistant Commissioner, an order for his deportation was issued under Section 4(a) of the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, on the ground that he was an alien who had been, after entry, a member of the Communist Party of the United States (Exs. 2, 6, 7). The evidence at the hearing showed that respondent had been a member of the Communist Party in 1938-1939 (R. 63, Ex. 2-10-5, 2-11). The Board of Immigration Appeals on December 11, 1951, dismissed respondent's appeal (Ex. 9).

On December 28, 1951, respondent filed, in the United States District Court for the Western District of Washington, a petition for a writ of habeas corpus and for a declaratory judgment attacking the validity of the deportation order on the ground, *inter alia,* that he was not an alien and was not within the class covered by the above-mentioned statute (R. 3-13). An order to show cause issued (R. 13-15), a return and answer were filed (R. 16-29), and, after argument, the district court denied the application (R. 30-38).

On appeal, the Court of Appeals for the Ninth Circuit reversed the judgment of the district court (R. 69), holding that respondent was not deportable under Section 22 of the Internal Security Act as an alien who was after entry a member of the Communist Party in that, (1) at the time of his membership he was not an alien, but a national of the United States, although sub-

ject to the laws relating to admission and expulsion as an alien; and (2) that, since he had entered the United States as a national, he had made no "entry" within the terms of the statute. (R. 63-67.)

REASONS FOR GRANTING THE WRIT

1. The decision below is of considerable importance in the administration of the immigration laws relating to internal security, and will produce undesirable results going far beyond the limits of this immediate case. If followed by other courts, it would automatically prevent the deportation of any Filipino non-citizen who, during the period between May 1, 1934 and July 4, 1946, was a member of one of the subversive classes enumerated in the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950. And it might well be considered to apply with equal force to Filipino non-citizens who, during the crucial period, committed acts of a criminal or immoral character which are made deportable offenses by statute. When it is considered that on July 1, 1946, there were about 46,000 Filipino non-citizens in the United States—the number has since increased to approximately 70,000—the impact of the decision is plain. While, obviously, no large proportion of the Filipinos in the United States on July 1, 1946, committed such deportable offenses between May 1, 1934, and July

4, 1946, it is significant that at the time the decision below was handed down, there were about 75 such cases under active consideration by the Immigration and Natualization Service, and it is more than probable that others will arise in the course of investigations into alien subversive and criminal activities.

Moreover, as the primary factor considered by the Court below is whether an individual was, in the strictest sense, an alien at the time of his membership in a subversive organization, the decision below might affect generally the deportability of former United States citizens, who, while enjoying such citizenship, were members of any of the groups or committed the kind of offense proscribed by the 1918 Act as amended, or by the present Immigration and Nationality Act.

2. We submit that the decision below is clearly wrong. As a native of the Philippine Islands, respondent acquired the status of a non-citizen national of the United States by virtue of Congressional grant.[2] That status as a national was modified by Section 8(a)(1) of the Act of March 24, 1934, generally known as the Philippine In-

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[2] Act of July 1, 1902, Sec. 4, 32 Stat. 691, c. 1369; Act of March 23, 1912, 37 Stat. 77, c. 65; Act of August 29, 1916, 39 Stat. 545, c. 416; 48 U.S.C. 1002 (1934 ed.); *Toyota* v. *United States*, 268 U.S. 402, 411; *Barber* v. *Varleta*, 199 F. 2d 419 (C.A. 9); *Gancy* v. *United States*, 149 F. 2d 788, (C.A. 8), certiorari denied, 326 U.S. 767; *Cabebe* v. *Acheson*, 183 F. 2d 795 (C.A. 9).

dependence Act, which became effective May 1, 1934, (p. 15, Appendix) to the extent that, for purposes of "all * * * laws relating to the immigration, exclusion, and expulsion of aliens", he was thereafter "considered as [an] alien[s]". And when the United States relinquished its sovereignty over the Philippine Islands and proclaimed its independence on July 4, 1946,[3] respondent became an alien for all purposes (R. 64).

Thus, during the period of respondent's membership in the Communist Party from 1938-1939, he was an alien for the purposes of the immigration laws. If he had been arrested for deportation at the time of such membership, he would have been deportable under the 1918 Act as an alien member of an organization advocating the violent overthrow of the government. Hence, when the Internal Security Act provided for the deportation of aliens who had ever been members of the Communist Party, it seems clear that respondent was properly treated as falling within the purview of that statute. It is not necessary, in order to reverse the decision below, to reach the question (which, as noted above, the decision below involves) whether a person who could not have been deported at the time of membership because he was a citizen or national, can neverthe-

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[3] Presidential Proclamation No. 2695; see note to 22 U.S.C., Supp. V, 1394; R. 66. *Application of Viloria*, 84 F. Supp. 584, 585 (D. Hawaii); *Cabebe* v. *Acheson*, *supra*.

less be deported for such membership after he loses citizenship or nationality and becomes an alien. Respondent was, for deportation purposes, an alien during the entire period of his membership in the Communist Party.

The court below conceded that the 1934 Act subjected Filipinos not only to immigration, exclusion and expulsion laws in existence at the time of its enactment, but also to "such as might thereafter be enacted" (R. 66). It held, however, that the status of Filipinos as aliens for deportation purposes during the period from 1934 to 1946 did not make them aliens for the purposes of the 1950 Act on the theory that by 1950 the Philippine Independence Act of 1934 had long since been made obsolete by the proclamation of Philippine independence in 1946. Neither the 1950 Act itself nor its legislative history support such a conclusion. While it is true that there is nothing to show that Congress had this special group of Filipinos specifically in mind when it considered the Internal Security Act, it is equally true that there is no evidence that Congress intended to exempt them from its provisions. There is overwhelming support, on the other hand, both in the language of the Act itself and in its legislative history, for the view that Congress intended the Internal Security Act to be as broad in scope as legally possible.

The compelling motive of Congress in originally enacting the Act of October 16, 1918, was to safe-

guard the United States against alien totalitarian forces. Experience had demonstrated the inadequacy of existing laws. From time to time, as Congress found increasing threats to the national security from such forces, the Act was strengthened by amendments.[4] This reached a climax in 1950, when Congress passed the comprehensive Internal Security Act of 1950 "to protect the United States against certain un-American and subversive activities." The legislative history shows that

> The amendments proposed by title III (of which section 22 was a part) provide that membership in any of the five classes denominated as anarchistic and similar classes at any time, of no matter how short duration, or how far in the past, shall prevent admission to the United States, or require deportation.[5]

In the light of this background, the lower court's assertion, that "There is nothing to show that when Congress enacted the Internal Security

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[4] *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 589, footnote 15. House Report No. 645, 65th Cong., 2d Sess. (amendment of June 5, 1920); House Report No. 994 and Senate Report No. 1154, 76th Cong., 1st Sess., Senate Reports No. 1721 and No. 1796 and House Conference Report No. 2683, 76th Cong., 2d Sess. (amendment of June 28, 1940, sec. 23); Senate Report 1199 and House Report No. 1286, 80th Cong., 2d Sess. (amendment of May 25, 1948).

[5] Senate Report No. 1154, 76th Cong., 1st Sess. See also *Carlson* v. *Landon*, 342 U.S. 524, 535.

Act, it had in mind the very special case of the Filipinos described in the quoted section of the Act of March 24, 1934" (R. 66), is devoid of force, for subversive acts become no less dangerous merely because performed by non-citizen nationals. Past membership in organizations advocating violent overthrow of the government had been made grounds for deportation by the Act of June 28, 1940 (54 Stat. 670, 673), to which the Philippine Independence Act clearly applied even under the theory of the court below that that Act became obsolete in 1946. It is not reasonable to interpret the 1950 Act, which restated and expanded the 1918 Act as amended by the 1940 Act, as having a narrower scope.

The beneficence of Congress in bestowing upon Filipinos the status as nationals of the United States—a status which it modified in the 1934 Act—should not now be used to distort Congressional efforts to expel from the United States aliens deemed dangerous to its security by reason of their past activities. To do so would deprive the United States of "a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state."[6] It would absolve this special group of former nationals from the legal consequences of their past conduct and would clothe them with a mantle of untouchability which is denied to aliens who never en-

[6] *Harisiades* v. *Shaughnessy, supra,* 587-8.

joyed the status of nationals of the United States. This Court said in *Eichenlaub* v. *Shaughnessy,* 338 U.S. 521, "commission [of crimes] by natualized citizens might well be regarded by Congress as more reprehensible than their commission by aliens who never had been naturalized" (p. 530). By analogy, a greater degree of loyalty and attachment to the principles of this government should be demanded of a non-citizen upon whom the United States had gratuitously bestowed the status of national, entitling him to its protection and concomitant benefits, than from persons who had not been so favored. Certainly an alien former national who joined a subversive organization should not be given a more privileged status than other aliens.

The theory that it is not sufficient, to support a deportation charge, that an alien have been in such status at the time the deportation proceedings were instituted, but that he must also have been an alien at the time of the offense or conduct constituting the ground for deportation, finds no support in the past or present laws relating to expulsion. These laws of necessity direct the expulsion of *aliens,* not citizens or non-citizen nationals; none contain or have ever contained qualifying provisions to the effect that alienage must have existed *prior* to the institution of deportation proceedings. If alienage exists when deportability is established, the statutes are satisfied. This Court so reasoned in the *Eichenlaub* case, *supra,* where it was held that

deportation was not precluded under the Act of May 10, 1920, because the Act "[did] not state that necessity" (p. 530). Neither does the statute under which the respondent was found deportable state that necessity.

Considerable reliance is placed by the court below upon the fact that subdivision (C) of Section 1(2) of the 1918 Act, as amended, is phrased in the present tense—"aliens who *are* members * * *". This, the court says, indicates that the subdivision was intended to apply only to persons who were "at the same time both aliens and members of the Communist Party" (R. 65). Concededly, when the principal clause of subsection 2—"Aliens who, at any time, shall be or shall have been members of any of the following classes"—is read with paragraph (C) of the subsection—"Aliens who are members of * * *"—a grammatical infirmity is apparent. However, this infirmity clearly was caused by language difficulties encountered in an effort to expand subsection 1 so that it would embrace *all* past and present alien members of subversive groups—rather than by a desire to limit application of the Act to persons who were simultaneously aliens and members of subversive groups. This syntactic inconsistency should not be seized upon to defeat the Congressional will which is implicit not only in the Act itself but in its legislative history as well.[7]

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[7] *Costanzo* v. *Tillinghast*, 287 U.S. 341, 344; *Ozawa* v. *United States*, 260 U.S. 178, 194.

This Court has consistently upheld the rule that starkly literal construction of a statute should not be permitted when it results in obscuring the will of Congress.

> The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language.[8]

Section 4 of the 1918 Act, as amended in 1950, commands the deportation of *any alien* under the conditions recited in the Act. That the respondent was an alien at the time deportation proceedings commenced is conceded by the court below (R. 64). That he was a past member of the Communist Party as charged was not challenged by the court (R. 63). As an alien, he is vulnerable to deportation at the will of Congress[9] and it is not material that the act under which he is found deportable was not in existence at the time the deportable offense was committed.[10]

3. As a secondary reason for its decision, the court below holds that the respondent did not

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[8] *United States* v. *Brown*, 333 U.S. 18, 25-26.

[9] *Harisiades* v. *Shaughnessy*, *supra*, p. 587.

[10] *Ng Fung Ho* v. *White*, 259 U.S. 276, 280; *Carlson* v. *Landon*, 342 U.S. 524, 534.

enter the United States and hence cannot be said to have been a member of the proscribed class *after entry* within the meaning of the 1918 Act, as amended. Presumably, the court based this conclusion on the ground that the respondent was not an alien but a national of the United States at the time he entered for permanent residence in 1926.

"Entry" is, in some contexts in the immigration laws, a term of art, i.e. in situations where the statute provides for the deportation of an alien if he commits an act within a specified number of years after "entry".[11] We submit, however, that it has no such technical meaning as used in a context, such as the one here involved, where deportability is based on a condition existing at any time.

The court below had itself previously so held in *United States* v. *Yamamoto,* 240 Fed. 390, involving a woman who had resided in Hawaii since birth and who had been found deportable on the ground of practicing prostitution "after such alien shall have entered the United States." The court sustained the deportation charge, holding that the quoted words should be construed to mean "while such alien is in the United States." It said (p. 391):

> The consideration which induced the amendment was that the objectionable aliens *were*

[11] *Lapina* v. *Williams,* 232 U.S. 78; *United States ex rel. Claussen* v. *Day,* 279 U.S. 398; *Delgadillo* v. *Carmichael,* 332 U.S. 388.

in the United States, not the manner in which they got there. [Emphasis supplied.] [12]

Clearly, the same reasoning compels application of Section 22 of the Internal Security Act to the respondent, without regard to the technical concept of "entry".

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

SEPTEMBER, 1953.

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[12] See also *United States* v. *Sui Joy*, 240 Fed. 392; *United States* v. *Wong Yuen, United States* v. *Ching Lum, ibid.*, decided on the same day by the court below and in which it reaffirmed its conclusion.

APPENDIX

The Act of March 24, 1934, as amended, known as the "Philippine Independence Act", 48 Stat. 456, c. 84; sec. 8, 48 Stat. 462-3; sec. 14, 48 Stat. 464; 53 Stat. 1230; formerly 48 U.S.C. 1232 *et seq.*, now obsolete:

Sec. 8 (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States, shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.

* * * *

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a

part of such laws, and all the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provisions of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

* * * *

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

The Act of October 16, 1918 (40 Stat. 1012, c. 186), as amended, June 5, 1920 (41 Stat. 1008, c. 251), June 28, 1940 (54 Stat. 670, 673, c. 439, sec. 23), May 25, 1948 (62 Stat. 268, c. 338) and September 23, 1950 (64 Stat. 987, 1006, c. 1024, sec. 22);

8 U.S.C., Supp. V, 137; repealed by section 403 (a) (16) of the Immigration and Nationality Act, P.L. 414, 82nd Cong. 2d Sess.

Sec. 1. That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *

Sec. 4 (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in * * * section 1(2) of this Act, shall upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	2
Argument against Granting the Petition	3
The Decision Below Is Clearly Correct	3
(a) Alienage	4
(b) Entry	6
(c) Deportable Class	8
Conclusion	10
Appendix	11

CASES CITED

Boyd v. Nebraska, 143 U. S. 135	5
Cabebe v. Acheson, 183 F. 2d 795	4, 5
Cincinnati Soap Co. v. United States, 301 U. S. 308	9
Delgadillo v. Carmichael, 332 U. S. 388	3, 6
Delguercio v. Gabot, 161 F. 2d 599	6, 7, 9
DiPasquale v. Karnuth, 158 F. 2d 878	6
Eagles ex rel. Samuels v. United States, 329 U. S. 304	2
Eichenlaub v. Shaughnessy, 338 U. S. 521	8
Gonzales v. Barbar, C. A. 9, No. 13566, Sept. 15, 1933	8
Helvering v. Lerner Stores Co., 314 U. S. 463	2
Inglis v. The Trustees of Sailors Snug Harbor, 3 Peters 99	4
Kessler v. Strecker, 307 U. S. 22	3
Loh Wah Suey v. Backus, 225 U. S. 460	4
Mandoli v. Acheson, 344 U. S. 133	5
Martinez v. Neelly, 197 F. 2d 462	7
Schneiderman v. United States, 320 U. S. 118	4
Suspine v. Compania Transatlantic Centroamericana, 37 F. Supp. 263	10

Page

Tama Miyake v. United States, 257 Fed. 732 6
Tan v. Phelan, 333 U. S. 6 ..... 3, 9
United States v. Kimi Yamamoto, 240 Fed. 390 .....6, 7, 8
United States v. Kwai Tim Tom, 201 F. 2d 595 6
United States v. Sui Joy, 240 Fed. 392 6
United States ex rel. Schlimmgen v. Jordan, 164 F. 2d 633 6
United States ex rel. Volpe v. Smith, 289 U. S. 422 6

STATUTES AND OTHER CITATIONS

Internal Security Act of 1950, 64 Stat. 987 .....2, 3, 7
Philippine Independence Act of 1934, 48 Stat. 462 ....2, 4, 5, 8, 9
Ratification Act, 61 Stat. 1174 2
Immigration and Nationality Act, 66 Stat. 167 ..... 7, 9
Neutrality Act of 1939, 54 Stat. 12 10
Presidential Proclamation No. 2695, 11 F. R. 7517 2

IN THE

Supreme Court of the United States

October Term, 1953

No. 345

JOHN BOYD, *District Director, Immigration and Naturalization Service,* and ROBERT D. CUMMINGS, *Petitioners*

v.

ERNEST ARCEBAL MANGAOANG, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the District Court (R. 48-53) have not yet been reported; the opinion of the Court of Appeals (R. 63-68) is reported at 205 F. (2d) 553.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. Subsequent to the decision of the Court of

Appeals, the District Court entered its order granting respondent's writ of *habeas corpus,* as set forth in the appendix. This fact, however, apparently *does not* affect this Court's appellate jurisdiction. See: *Eagles ex rel. Samuels* v. *United States,* 329 U.S. 304.

QUESTIONS PRESENTED

Whether respondent, a Filipino, is deportable for alleged past membership in the Communist Party, when such alleged membership occured while respondent was indisputedly a United States national; whether respondent, having arrived in the continental United States for permanent residence while a United States national, and prior to the passage of the Philippine Independence Act of 1934, ever "entered" the United States within the meaning of the Internal Security Act of 1950; and whether respondent is now an alien.[1]

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Petition at pp. 15-17.

STATEMENT

Respondent arrived in the continental United States on April 26, 1926, for permanent residence, when indisputedly enjoying the status of a United States national, and has resided here permanently ever since (R. 5, 19). On August 10, 1951, he was ordered deported as an alien who, after entry, had become a member of the Communist Party, purportedly pursuant to the provisions of Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006. The Board of Immigration Appeals affirmed this decision (Ex.

[1] The Court of Appeals held that respondent was an alien since the ratification of the Treaty of Independence in 1946, 61 Stat. 1174, and Presidential Proclamation No. 2695, 11 FR 7517. This question is raised by respondent as a further ground in support of the judgment below. See: *Helvering* v. *Lerner Stores Co.,* 314 U.S. 463.

9), as did the District Court upon respondent's petition for a writ of *habeas corpus* (R. 30-38). While holding that respondent was presently an alien, the Court of Appeals reversed the judgment of the District Court on the grounds that respondent had never belonged to a deportable class specified in the 1950 Act, and that he had never "entered" within the meaning of that act (R. 63-67).

ARGUMENT AGAINST GRANTING THE PETITION

A decision which affects the status of some 46,000 Filipino non-citizens who permanently reside in the United States is obviously of some importance, and, in fact, since their citizen wives and children are likewise affected, the ultimate scope of the decision is far greater than outlined by petitioners. This fact, however, does not call for review by the Court, since the decision was clearly correct. Moreover the decision was in favor of the non-citizens rather than one which subjects them to potential banishment and deprivation of "all that makes life worth living." This court has long adopted the rule of strict construction against expulsion: *Tan* v. *Phelan,* 333 U.S. 6; *Delgadillo* v. *Carmichael,* 332 U.S. 388; *Kessler* v. *Strecker,* 307 U.S. 22. This rule is primarily important where ambiguity exists. In the instant case, however, there is no such ambiguity, and the Court of Appeals beyond any doubt interpreted and applied the Internal Security Act of 1950, 64 Stat. 987, 1006, correctly.

The Decision Below Is Clearly Correct

The pertinent statute, cited *supra,* provides, insofar as relevant (emphasis supplied):

> "Any *alien* who was *at the time of entering the United States, or* has been at any time *thereafter* * * *a member of any one of the classes of aliens enumerated in Section 1 (2) of this act [to wit] * * * *aliens who are members of* * * * *the Communist Party* of the United States [shall be expelled.]"

It is patent from a reading of this provision that before respondent may be expelled it must be established that respondent is (1) an alien, (2) who entered the United States, and (3) who was or is a member of the class: "aliens who are members of the Communist Party."

(a) Alienage

While the Petition speaks of the "beneficence of Congress" which "gratuitously bestowed the status of national" upon respondent, it must be underscored that this Court has never determined that Filipino non-citizens who came to the continental United States prior to the passage of the Philippine Independence Act of 1934, 48 Stat. 462, 464, are presently aliens. This conclusion of the courts below (R. 48, 64), was based upon the decision in *Cabebe* v. *Acheson,* (CA 9) 183 F. (2d) 795, which held such nationality was lost by *inference.* The denial of respondents nationality, a status that he has held from birth, is of serious consequence, not only to respondent, but to all non-citizens who, as nationals, came to the United States prior to the Philippine Independence Act of 1934, 48 Stat. 464.

In *Schneiderman* v. *United States,* 320 U.S. 118, 122, this court recognized the importance of citizenship as a status to be protected. To respondent the status of United States national is equally valuable; he has always lived within the jurisdiction of the United States and he is attempting to remain in the United States and become a citizen.

In *Low Wah Suey* v. *Backus,* 225 U.S. 460, at 473, this Court defined alienage as:

> "One born out of the jurisdiction of the United States, and who has not been naturalized under their Constitution and laws."

Numerous cases involving citizenship or nationality arose during the Revolutionary war, and citizenship was held to be based upon *domicile* and *intention;* see: *Inglis* v. *The Trustees of Sailors Snug Harbor,* 3 Peters 99, at 159-160.

Expatriation is recognized as a fundamental right of all human beings, and is the explicit underlying theory of our nationality code.

In *Boyd* v. *Nebraska*, 143 U.S. 135, this court stated specifically, at 162:

> "Manifestly the nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal, or otherwise as may be provided."

Congress has never made any express provision with respect to persons who have always resided in the United States as nationals. The Philippine Independence Act of 1934, 48 Stat. 456, did not define the status of such persons; it did not even become effective until its acceptance by concurrent resolution of the Philippine Legislature or by a convention called for that purpose: 48 Stat. 465.

Respondent, at that time, was not a part of the body politic of the Philippine Islands, having long since come to the continental United States. Also, whatever theoretical ties that respondent may have had with the Philippines, as soon as the Treaty of Independence was ratified, he unequivocally expressed his intent to remain a national of the United States and forego any claim of Philippine nationality, by attempting to take advantage of the special naturalization laws relating to Filipinos, (Exhibit A, Part I, government's exhibit 9). Under these circumstances it seems clear that respondent's nationality, with which he was born, and which he has at all times maintained by unequivocal acts, cannot be taken away by inference: see, *Mandoli* v. *Acheson*, 344 U.S. 133.

The argument of petitioners rests solely upon the rationale of *Cabebe* v. *Acheson*, *supra*, which concluded, at 800-801:

> "The status of United States nationality . . . was the direct result of the . . . assumption of sovereignty . . .

When the United States relinquished its sovereignty, there remained no basis for status."

This is true with respect to those persons residing in the Philippine Islands, but as to respondent the argument fails to appreciate that *in the meantime* that status had been acted upon. Thus, respondent is not seeking to expatriate himself to obtain United States nationality, he is seeking to prevent involuntary expatriation.

Since the loss to respondent of his status is much more important than contract or property rights, and since the change of position incurred by respondent upon the reliance of his United States nationality is clearly of such a nature as to guarantee Constitutional protection if contract or property rights were the issue, it is submitted that respondent's status is entitled to that protection. At the very least his status is *sui generis:* see, *United States* v. *Kwai Tim Tom,* (CA 9) 201 F (2d) 595.

(b) Entry

Concerning the problem of the meaning of "entry", the Petition urges that the word should be interpreted as meaning physical entrance despite the fact that it has the accepted meaning of an alien voluntarily coming to the United States from a foreign country: *Delgadillo* v. *Carmichael,* 332 U.S. 388; *United States ex rel. Volpe* v. *Smith,* 289 U.S. 422; *United States ex rel. Schlimmgen* v. *Jordan,* (CA. 7) 164 F. (2d) 633; *DiPasquale* v. *Karnuth,* (CA 2) 158 F. (2d) 878; *Delguercio* v. *Gabot,* (CA 9) 161 F. (2d) 599. Petitioners chose to rely upon the mossy holdings of the court below, decided some 35 years ago: *United States* v. *Kimi Yamamoto,* (CA 9) 240 Fed. 390; *United States* v. *Sui Joy,* (CA 9) 240 Fed. 392. See also: *Tama Miyake* v. *United States,* (CA 9) 257 Fed. 732.

The facts in all three cases involved the issue whether aliens who had settled in Hawaii prior to the annexation in 1898 could thereafter be ordered deported for acts com-

mitted "after such alien shall have entered the United States." The court in the *Yamamoto* case, pointed out, *supra,* at 391:

> "In ascertaining the intention of Congress in making the amendment of 1910, an important fact is that the amendment was made by striking certain words from the former act, whereby the time limitation in the former act was repealed."

In other words the court felt at that time (*i.e.,* 1917), and under those circumstances, that Congress should be held to have intended to use the word "entry" in the sense of physical entrance. Subsequently, however, judicial precedent has evolved the accepted meaning, cited above. Furthermore, what renders petitioners' argument particularly disingenuous is the fact that there is no mention that, subsequent to the institution of the within deportation proceedings, Congress removed all doubt as to its meaning of the word by defining it in Sub-section 101(a) of the Immigration and Nationality Act of 1952, 66 Stat. 167, as follows:

> "(13) the term 'entry' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession * * *"

When respondent came to the United States in 1926 he was indisputedly a national of the United States and he did not come from a foreign port or outlying possession; therefore, respondent never "entered" within the meaning of the Internal Security Act of 1950. The subsequent legislation makes clear beyond any doubt in what sense the word was employed by Congress: see, *Martinez* v. *Neelly,* (CA 7) 197 F. (2d) 462; affirmed without opinion by a divided court: 344 U.S. 916.

One additional point should be stressed. In 1947, the court below, in *DelGuercio* v. *Gabot, supra,* held that a Filipino who last came to the United States prior to the ef-

fective date of the Philippine Independence Act of 1934, could not be deemed to have entered within the meaning of the then existing laws since he was not then an alien for any purpose.[2] Congress never saw fit to define the word "entry" to change this result, and, in 1952, expressly adopted it. Thus, it cannot be assumed, as contended by petitioner, that Congress overlooked the specific impact of the term "entry" to Filipino non-citizens.

(c) Deportable Class

Turning to the problem of whether respondent was ever a member of a deportable class, petitioners ask this court to believe that, after all the years of study and attention given to the question of expulsion, Congress has nevertheless blundered. It is urged that there is a "grammatical informity" and a "syntactic inconsistency" which the court below improperly failed to remedy. Such an argument might have had validity in 1917, when the court below decided *United States* v. *Kimi Yamamoto, supra,* but today it smacks of an unabashed plea for judicial legislation.

More striking, however, is the fact that while making this argument, petitioners at the same time urge the applicability of *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, a case which involved an expulsion provision where Congress demonstrated beyond all doubt that it could, when it intended to, eliminate any conjunctive requirement of alienage and the deportable act. (It should be underlined that three of the seven judges participating in the *Eichenlaub* case felt that a conjunctive requirement of alienage should be *implied.*)

Finally, as if to remove all doubt, Congress, subsequent to the instant proceedings, recodified the explusion provi-

[2] The court below has, subsequent to its decision in the within case, again affirmed its position as to "entry" of Filipinos prior to 1934: *Gonzales* v. *Barbar* (CA. 9) F. (2d) , No. 13566, opinion of September 15, 1953.

sions, and in paragraph (6) of Subsection 241 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 205, retained the conjunctive language with respect to the deportable act involved herein, *while eliminating such language in all other paragraphs of Subsection 241 (a)*.

It is submitted, therefore, that the import of petitioners' argument is that Congress must be presumed to have intended to provide for the expulsion of all non-citizens whom the Attorney General deems should be expelled (a presumption at direct odds with the rule of *Tan* v. *Phelan, supra*), and that therefore the Court should re-write the statute so as to effectuate this imagined intent.

Regarding the actual status of Filipinos in 1938 and 1939, the time of respondent's alleged membership in the Communist Party, it is clear that the terms of the Philippine Independence Act, 48 Stat. 464, at most provided that respondent might be treated "as if" an alien for the limited purpose of the then existing immigration laws, and that he was in fact not then an alien. From a reading of the entire act, moreover, it becomes clear that the intended import of the act was to curtail and affect the status of Filipinos who sought to come to the United States after the effective date of the act; see: *DelGuercio* v. *Gabot, supra.*

Furthermore, respondent being in fact a national in 1938, it is difficult to conceive how he could nevertheless be considered "as if" an alien, as that term is used in the Internal Security Act of 1950, when the basis for the claimed pseudo-alienage is an act defunct and obsolete since 1946, after ratification of the Treaty of Independence, 61 Stat. 1174.

Finally, it should be stressed that the Philippine Independence Act was not an all inclusive settlement of either the status of respondent or of the Philippine Islands; see: *Cincinnati Soap Co.* v. *United States,* 301 U.S. 308, 318-320. For example, in 1941 Filipino seamen were held to be *citizens* within the meaning of the Neutrality Act of 1939, 54

Stat. 12: *Suspine* v. *Compania Transatlantic Centroamericana*, (S.D.N.Y.) 37 F. Supp. 263.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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Counsel for Respondent.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 2954

ERNESTO ARCEBAL MANGAOANG, *Petitioner,*

vs.

JOHN P. BOYD, *Director of Immigration and Naturalization Service,* and ROBERT D. CUMMINGS, *Respondents.*

Order Granting Writ of Habeas Corpus Releasing Petitioner and Exonerating Bond

This matter having come on duly and regularly before the undersigned judge of the above entitled court and it appearing that heretofore the mandate of the Circuit Court of Appeals of the Ninth Circuit has been remitted, pursuant to law, and that the said mandate has been approved by counsel for petitioner and respondent herein, and has been spread upon the minutes of this court; said mandate having ordered that the petition for writ of haveas corpus be granted and that petitioner be released from all further custody of the respondent, Now Therefore

IT IS HEREBY ORDERED that petitioner's petition for a writ of habeas corpus be, and the same is hereby granted, and

IT IS HEREBY FURTHER ORDERED that respondent, John P. Boyd, release petitioner, Ernesto Arcebal Mangaoang, from all custody pursuant to the warrant of arrest and order of deportation, which were the bases for his power to detain and deport petitioner; and

IT IS HEREBY FURTHER ORDERED that the bond of petitioner in the sum of $5,000.00 be exonerated, and that peti-

tioner be released from all further supervision of respondent, Robert D. Cummings.

DONE IN OPEN COURT this 3rd day of August, 1953.

(s) WILLIAM J. LINDBERG,
Judge.

Presented and Approved by:
(s) SIEGFRIED HESSE,
Of Counsel for Petitioner

Received and Approved by:
(s) J. CHARLES DENNIS
U. S. Attorney
by
(s) JOHN BELCHER
Attorneys for Respondent,
JOHN P. BOYD

(s) MELVILLE OSERAN,
OF WALTHEW, OSERAN & WARNER,
Attorneys for Respondent,
ROBERT D. CUMMINGS.